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ARTICLE

FROM PROPHECY TO POLICY: BISHOPS, PRUDENCE, AND IMMIGRATION POLITICS

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I. INTRODUCTION: PROPHETS AND POLICY

On the day I began writing this paper, the *Los Angeles Times* reported that His Eminence Roger Cardinal Mahony created a stir when he devoted his Ash Wednesday homily to promoting a five-point program for immigration reform.¹ He urged his flock to ask the Lord to open their hearts to immigrants in the 2006 Lenten season:

This Lenten season, join me in committing our Lenten practices to making room for the stranger in our midst, praying for the courage and strength to offer our spiritual and pastoral ministry to all who come to us, offering our prayer and support for the ones in our midst who, like Jesus, have no place to rest their heads (Mt 8:20).²

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1. Teresa Watanabe, *Mahony's Lenten Message Irritates Some at Service*, L.A. TIMES, Mar. 2, 2006, at 3, available at 2006 WLNR 6961782.

2. Cardinal Roger Mahony, Archbishop of L.A., *2006 Lenten Message: Making Room*, Mar. 1, 2006, <http://www.archdiocese.la/news/story.php?newsid=720>.

Although the tone of his message was pastoral, the Archdiocesan press release that accompanied it was pointedly political: "In his annual Lenten Message, Cardinal Roger Mahony calls on all Catholics in the Archdiocese of Los Angeles to commit their Lenten practices of prayer, fasting and good works to immigration reform, 'especially in the face of increasing hostility toward immigrants.'"³

The cardinal is not alone in putting his Episcopal weight behind a reform of the U.S. system. The U.S. Conference of Catholic Bishops' (USCCB) website confirms this political commitment.⁴ Specifically, the Migration and Refugee Services section contains all of the trappings of a public policy advocacy site.⁵ For example, this section contains two public statements by bishops urging a policy of legalization for eleven million illegal immigrants and urging opposition to immigration legislation passed by the House of Representatives last December.⁶ It contains background reports on legalization, one claiming that "[l]egalization is a matter of justice" (including a list of political talking points), and another asserting the bishops' collective support for the McCain-Kennedy reform bill and collective opposition to the Sensenbrenner-King legislation.⁷ It also contains suggestions for homilists and liturgists to challenge parishioners to become advocates for immigrants⁸ and suggestions for religious education programs—complete with recommended children's books and a "cartoon contest in which the students illustrate unjust treatment of immigrants, migrants, or refugees throughout U.S. history."⁹

The bishops' aggressive advocacy, both to the Catholic flock and in the political arena, is imprudent. By substituting their judgment for that of their flocks, on policy questions about which Catholics of goodwill can dis-

3. *Cardinal Mahony Calls on Catholics to Fast for Immigration Reform this Lenten Season*, Feb. 28, 2006, <http://www.archdiocese.la/news/story.php?newsid=719>.

4. U.S. Conference of Catholic Bishops Home Page, <http://www.usccb.org/> (last visited Mar. 28, 2007).

5. U.S. Conference of Catholic Bishops, Migration & Refugee Services Home Page, <http://www.usccb.org/mrs/> (last visited Mar. 28, 2007).

6. *Statement from Cardinal Justin Rigali on Immigration Reform*, Jan. 9, 2006, <http://www.archdiocese-phl.org/pressreleases/pr001013.htm>; *Statement of Most Reverend Gerald R. Barnes, Bishop of San Bernadino, California, Chariman, U.S. Conference of Catholic Bishops' Committee on Migration in Opposition to the Border Protection, Anti-Terrorism, and Illegal Immigration Control Act of 2005* (Dec. 14, 2005), <http://www.usccb.org/mrs/hr4437.shtml>.

7. U.S. Conference of Catholic Bishops, Migration & Refugee Services, Office of Migration & Refugee Policy, *Legalization of Undocumented Immigrants*, Nov. 2002, <http://www.usccb.org/mrs/legal.shtml>; U.S. Conference of Catholic Bishops, Migration & Refugee Services, Office of Migration & Refugee Policy, *Anti-terrorism Bill Said to Hinder Thousands of Refugee Applicants*, 2007, <http://www.usccb.org/mrs/mrp.shtml>.

8. U.S. Conference of Catholic Bishops, Migration & Refugee Services, *Welcoming Christ in the Migrant: Prepare a Homily on "A Journey of Peace and Hope,"* Jan. 2007, <http://www.usccb.org/mrs/nmw/homily.shtml>.

9. U.S. Conference of Catholic Bishops, Migration & Refugee Services, *Ideas for Schools, Religious Education, and Youth Programs*, <http://www.usccb.org/mrs/youth.shtml> (last visited Jan. 27, 2007).

agree, the bishops appear to be overstepping their authority to teach Catholic Social Teaching (CST).

I make this claim, not because I find CST on immigration unhelpful—on the contrary—it has become an indispensable moral framework for my thoughts on the subject. CST provides a set of first principles which I accept, partly on the authority of the bishops and partly on the power of those principles to illuminate the moral stakes in social policy. First principles are indispensable, and the bishops provide an important service in teaching them. My unease does not relate to my opinions about current immigration policy. Simply, the bishops are claiming an authority they do not have, and are thereby putting their authority on matters of faith and morals at risk, including their authority to teach the invaluable principles of CST.

CST is a reflection on the implications of the Christian Gospel for the social order. According to the *Catechism of the Catholic Church*: “Christian revelation . . . promotes deeper understanding of the laws of social living.”¹⁰ As a result of reflection on the Christian revelation about humanity, the *Catechism of the Catholic Church* provides, “[t]he Church’s social teaching proposes principles for reflection; it provides criteria for judgment; it gives guidelines for action.”¹¹ These principles, criteria, and guidelines have a claim on the conscience of Catholics, but they should not be applied to the particular environments in which policy is made. The virtue of prudence is necessary to turn CST into policy.

The *Catechism of the Catholic Church* defines prudence as “the virtue that disposes practical reason to discern our true good in every circumstance and to choose the right means of achieving it.”¹² Prudence is the virtue by which a person takes “the abstract good” and makes it real in concrete circumstances. In politics the exercise of prudence belongs primarily to the laity. According to *Lumen Gentium*, the laity are the primary agents of Christ’s mission in secular affairs: “the laity, by their very vocation, seek the kingdom of God by engaging in temporal affairs and by ordering them according to the plan of God.”¹³ When the bishops teach about which immigrant legislation is worthy of support, they encroach on the practice of prudence by the laity (assuming that the Episcopal charism—to proclaim the Gospel, to teach, and to shepherd the church—grants a special anointing to their prudential judgments about policy). This aggressive political agenda is founded on a misunderstanding of the nature of prudence; it is itself imprudent.

10. *Catechism of the Catholic Church: Modifications from the Editio Typica* No. 2419 (2d ed., U.S. Catholic Conf. 1997) [hereinafter *Catechism of the Catholic Church*].

11. *Id.* at 2423.

12. *Id.* at 1806.

13. Documents of the Second Vatican Council, *Lumen Gentium*, No. 31, Nov. 21, 1964, available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html.

There is much to sort out here. What do the bishops teach authoritatively? What is CST? What good are the general principles of CST if they are not applied? How are general principles turned into concrete goods? While the discussion of these questions often turns on disputed matters of ecclesiology and church authority, the crucial context of the discussion should be the Christian virtue of prudence.

Section two outlines the principles of CST on immigration and addresses the common complaint that they are too general to be useful. Section three introduces prudence and highlights the requirements for the full exercise of prudence. Section four reviews the details of U.S. immigration in order to make clear the various goods at stake in the application of CST to U.S. immigration policy. In light of these requirements, section five makes the case that the prophetic approach of the bishops, while suited to point out dangers to human dignity, is ill-suited to the prudential decision-making necessary to create a just and merciful immigration policy.

II. CATHOLIC SOCIAL TEACHING ON IMMIGRATION

*Man has the right to leave his native land for various motives—and also the right to return—in order to seek better conditions of life in another country.*¹⁴

The principles of CST on immigration are not in dispute and are easy to summarize. First, there exists a right to migrate. Second, this right is not absolute; nations have a right to regulate migration. Third, the extent of the right to migrate should be determined in light of the universal common good.

The right to migrate is rooted in the clear command in scripture to welcome the stranger.¹⁵ Immigrants are made in the image of God and have the same dignity as nonmigrants. Their right to migrate is similar to their right to property—persons have rights to those things that make possible their development as persons; migration and property are both important for the material provision of families.¹⁶ In *Sollicitudo Rei Socialis*, John Paul II

14. Pope John Paul II, *Laborem Exercens*, No. 23, Sept. 14, 1981, available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens_en.html.

15. Exodus 1:8–12; Leviticus 19:33–34. For an analysis of the rights context of U.S. immigration policy, see DEBRA DeLAET, *U.S. IMMIGRATION POLICY IN AN AGE OF RIGHTS* (Praeger Publishers 2000). The 1965 Immigration Reform Act, which made possible the mass migration of the last forty years, should be understood as part of the Civil Rights movement of the sixties. It was an international counterpart to the Civil Rights Act and the Voting Rights Act: just as all citizens were to be treated as equals before the law, regardless of race or creed, all those seeking to become citizens should be treated equally.

16. Pope John XXIII, *Mater et Magistra*, No. 45, May 15, 1961, available at http://www.vatican.va/holy_father/john_xxiii/encyclicals/documents/hf_j-xxiii_enc_15051961_mater_en.html.

ties the right to migrate to the right to economic initiative, which is often abridged in home countries.¹⁷

Although the popes clearly assert a right to migrate, they frequently express concern about the effects of migration. Although the international migrant is clearly within his rights, the decision to migrate is regrettable because it puts the migrant at risk of losing his faith and in danger of being economically exploited.¹⁸ CST frequently mentions the burdens of migration on the *sending* country. In *Laborem Exercens*, John Paul II emphasizes that emigration is a regrettable loss for the home country, which loses a subject who exercises creative agency in the society to which he migrates.¹⁹ The popes have frequently expressed the hope that the reform of the international economic system will make migration less frequent.²⁰

Notwithstanding its solicitude for the plight of the migrant, the second principle of CST on immigration is that the right to migrate is not absolute. John Paul II's statement that "illegal immigration should be prevented," implies that states have a right to enforce restrictions on migration.²¹ John Paul II also stated that the right to migrate must be regulated in light of the burdens it imposes on the host country.²² When the migration is large and the migrants are from a different culture, the host country may "fear the loss of its identity."²³ Large migrations may strain the resources of host countries, since "practicing [migration] indiscriminately may do harm and be detrimental to the common good of the community that receives the migrant."²⁴

CST recognizes that immigration may put other human goods at risk in countries that receive large immigrations, and therefore these countries may

17. Pope John Paul II, *Sollicitudo rei Socialis*, No. 15, Dec. 30, 1987, available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis_en.html.

18. 18. Paul VI, *Populorum Progressio*, March 26, 1967, ¶ 67 available at http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_26031967_populorum_en.html.

19. Pope John Paul II, *Laborem Exercens*, *supra* note 14, at No. 23.

20. Because CST regards migration as in some ways a regrettable right, it recommends a set of policies, which at the same time guarantee the right, yet seek to make it less likely that the right will be exercised. See Pope Paul VI, *Octogesima Adveniens*, No. 17, May 14, 1971, available at http://www.vatican.va/holy_father/paul_vi/apost_letters/documents/hf_pvi_apl_19710514_octogesima-adveniens_en.html (Pope Paul VI urges an international agreement to guarantee the right of emigration); see also Pope John XXIII, *Mater et Magistra*, *supra* note 16, at No. 45 (Pope John XXIII points out that one of the benefits of international peace between countries is that it makes migration easier, helping to guarantee the right.).

21. Pope John Paul II, *Message for World Migration Day 1996*, July 25, 1995, available at <http://www.ewtn.com/library/PAPALDOC/JP950725.htm>.

22. Pope John Paul II, *Message for World Migration Day 1993*.

23. Pope John Paul II, *Message for World Migration Day*, No. 1, Nov. 9, 1997, available at http://www.vatican.va/holy_father/john_paul_ii/messages/migration/documents/hf_jp-ii_mes_09111997_world-migration-day-1998_en.html.

24. Pope John Paul II, *Message of the Holy Father for the 87th World Day of Migration 2001*, No. 3, Feb. 2, 2001, available at http://www.vatican.va/holy_father/john_paul_ii/messages/migration/documents/hf_jp-ii_mes_20010213_world-migration-day-2001_en.html.

regulate immigration. This begs the question: if the right to migrate is not absolute, how are its limits determined? The third principle is that the mediation of rights must be tied to the universal common good. John Paul II utilized the universal common good to define the boundaries of the right to migrate when he stated "rights are concretely employed in the concept of the universal common good, which includes the whole family of peoples, beyond every nationalistic egoism. The right to emigrate must be considered in this context."²⁵

Concretely employed, the universal common good implies the following about U.S. immigration policy. First, discussions about immigration cannot focus exclusively on the costs and benefits of immigration to the host country, but must also consider the costs and benefits to the immigrants. Second, the right to migrate is strongest for the most poor and vulnerable immigrants. Refugees and asylees fleeing dangers of death or persecution have the closest thing to an absolute right to migration. Those who are fleeing poverty have a strong, but not absolute claim. Those seeking education, or simply a more comfortable life, have a right to migrate, but it is weaker than the right of the desperately poor and endangered.

These principles alone do not determine immigration policy in any particular nation—justice requires that the rights of immigrants, however strong, be balanced against the human goods at stake in receiving countries. There may in fact be few or no burdens on the receiving nation. But, even if the burdens are large, they may be outweighed by the rights of the migrants, or by the command to welcome the stranger. Whatever the case, the principles of CST on immigration do not determine policy without reference to the particular reality in which electorates and legislators shape policy.

At this point, some become impatient with CST. If it does not go past its general principles to policy prescription, some believe, what good are these principles if they do not determine policy? While it is true that CST principles leave the citizen and the policymaker with much work to do, they are not toothless. John Paul II defends the principles of CST against this criticism, asserting its crucial role as a moral framework for analysis:

The Church has models to present; models that are real and truly effective can only arise within the framework of different historical situations, through the efforts of all those who responsibly confront concrete problems in all their social, economic, political, and cultural aspects, as these interact with one another. For such a task the Church offers her social teaching as an *indispensable and ideal orientation*.²⁶

25. *Id.*

26. Pope John Paul II, *Centesimus Annus*, No. 43.1, May 1, 1991, available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus_en.html.

According to John Paul II, the principles outlined above are not useless; instead, they are "indispensable." Of course, they are useless if they do not result in concrete realizations of justice, but they make such acts possible by helping us to think clearly about them.

The principles of CST on immigration orient the believer toward moral policy in two ways. First, anyone who takes these principles seriously cannot exclude the interests of immigrants from his policy deliberations—a country should not only consider the interests of its own citizens when formulating its immigration policy. The interests of its citizens (the nation's common good) are relevant but cannot be a comprehensive framework for policy. A just nation cannot be completely insular; it must orient itself outward. Second, any policy that restricts the immigration of poor immigrants can only be justified because of the very heavy burdens of immigration on the host country, since scripture commands a special solicitude toward both the poor and the sojourner.

Thus, CST sharply delimits the debate on immigration, even before it is employed. In proclaiming it, the bishops perform a real service for the faithful. CST does not determine policy, nor does its proclamation make the challenges of prudential policy formulation any less complex. CST does not by itself rule out all restrictions on immigration, because judgments about the burdens of immigration must take into account the particular challenges immigration poses for a particular country at a particular time in its history. To turn principle into policy requires the exercise of prudence.

III. PRUDENCE

Aristotle defines prudence as "a reasoned and true state of capacity to act with regard to human goods."²⁷ It is through the exercise of prudence that we make the-good-in-general concretely real in particular circumstances. In the political arena, it is through the exercise of prudence that we take CST and make policy. In *The Four Cardinal Virtues*,²⁸ Josef Pieper explores the nature of prudence, details the barriers to its full perfection, and explains its central importance in the moral life.

According to Pieper, prudence makes universal goods concrete in particular circumstances.²⁹ Because the particular contexts in which an individual seeks to instantiate the good are highly contingent (that is, they are not necessary), there is no formula or technique for exercising prudence.³⁰ Human goods can be realized in different ways and to different degrees in particular contexts. Not every good can be realized in every situation, and there are trade offs often between the goods that can be realized.

27. ARISTOTLE, *Nicomachean Ethics*, in *THE BASIC WORKS OF ARISTOTLE* 1027 (Richard McKeon ed., David Ross trans., 1941).

28. JOSEF PIEPER, *THE FOUR CARDINAL VIRTUES* (Harcourt, Brace & World 1965) (1954).

29. *Id.* at 10.

30. *Id.* at 29.

Because prudence guides action in a messy, contingent world, one can never be as certain about matters of prudence as one can be about theoretical truths: "The certitude of prudence can never be so great as completely to remove all anxiety."³¹ First principles of moral theology can be known more certainly than the implications of those principles in action. People may agree about the principles, but disagree about what action to take.

And because human goods and human perfection become real only through prudently considered acts, and each human being is called to the responsibility and freedom that prudence makes possible, no person can be prudent for another:

The imperative of prudence is always and in essence a decision regarding an action to be performed in the "here and now." By their very nature such decisions can be made only by the person confronted with the decision. No one can be deputized to make them. No one else can make them in his stead. Similarly, no one can be deputized to take the responsibility which is the inseparable companion of decision. No one else can assume this burden. The strict specificity of ethical action is perceptible only to the living experience of the person required to decide.³²

The individual is called to realize the good in those matters which fall to him, be they matters of responsible citizenship or of some other sphere of action. This call to prudence is part of being a free human subject, and the full response to it—embracing the burden and responsibility of acting for the good—is crucial to the development of human personality.

Catholic teaching can guide the prudent person through education in general principles. To go beyond this, by offering more detailed guidance, is to risk the "non-human" rigidity of casuistry, and to stunt the moral growth of the person called to be prudent:

No matter how much moral theology "goes into details," such wisdom alone does not make a man "prudent" . . . And any moral theology becomes truer and more genuine, and above all more capable of dealing with life, the more it expressly renounces such a claim. The guarantee of the goodness of concrete moral action is given solely by the virtue of prudence.³³

Pieper makes two points here, each of which is relevant to the specific policy guidance the bishops are now giving on immigration. First, to give excessively detailed guidance to someone called to exercise prudence can rob that person of the moral development that the exercise of prudence makes possible. Second, such detailed guidance about the particular application of general principles is counterproductive. The "guarantee" of success in leavening society with Gospel principles is the virtue of prudence in

31. *Id.* at 18.

32. *Id.* at 27–28.

33. *Id.* at 28.

the individuals who act; a society of well-formed, prudent Christians is a much stronger foundation on which to build a just society than a society of passive parishioners who take their political marching orders from the church.

If this were all Pieper had to say about prudence, his discussion would still provide ample ground for the exercise of healthy discretion by bishops in the guidance they give their flocks on social policy. Catholics seeking to promote justice in society require knowledge of universal principles and must instantiate those principles in a variety of concrete circumstances that make specific episcopal guidance problematic. A bishop (or bishops' conference) who teaches the laity that CST requires support for this—instead of that—piece of legislation crowds out the exercise of prudence by the laity. The negotiations and tradeoffs which shape the legislative process, and the multitude of tradeoffs facing the Catholic voter, both require prudence. Authoritative teaching about Catholic principles does not by its nature cover the contingent environment in which policy is made. Prudence must govern the struggle to realize the principles of CST in society.

Pieper's discussion of the ways in which prudence can be defective offers further insight into the pitfalls of religious guidance on policy. By teaching principles of faith and morals, the bishops can claim the special grace and guidance promised to the apostles and their successors. When bishops venture beyond their teaching office into policy analysis, however, there is no guarantee that their teaching charism prepares them for decisions that are the responsibility of the laity.

Pieper outlines how the exercise of prudence can lead one astray. According to Pieper, perfected prudence "looks two ways": perceptively, it requires an openness to the real contingencies which frame action, and imperatively, it is ordered toward action.³⁴

Effective action for the good must take real conditions into account; prudence must be open to the reality of the world and society. There are three elements to this openness. First, the individual must have an honest, "true-to-being" memory.³⁵ This is not just a technical capacity to remember, but the will to remember truthfully. One has only to make this statement to underscore how common false memory, even the *will* to remember falsely, is. Second, prudence must be docile before reality.³⁶ The acting person must allow himself to be instructed by reality—must be willing to let the truth contradict him. The close-minded know-it-all, who allows himself to see only those things that confirm his preconceived notions and serve his political cause, cannot act prudently. Finally, the prudent person must be able to confront surprising, unexpected events, and respond appropri-

34. PIEPER, *supra* note 28, at 11–12 (Harcourt, Brace & World 1965) (1954).

35. *Id.* at 15.

36. *Id.* at 16.

ately.³⁷ Reality often shocks and surprises us, and we must be able to adjust to it, not in a panicky or reflexive way, but with measured, nimble judgment.

Although Pieper outlines the barriers to forward-looking prudent action, it is those defects in prudence that render the person closed to present reality that seem most common in the political arena, where the bishops have become active. The ferocious competition that marks the political fray in the United States makes openness to reality a mark of a prudent person very difficult. Those involved in the constant skirmishes of politics sometimes end up recruiting reality to their cause; instead of “true-to-being” memory, they are prone to selective memory; instead of docility, there is an unwillingness to let reality contradict their program; instead of nimble adjustment to the surprises inherent in any contact with reality, they may spin facts to match the party line.

In light of the nature of prudence and the defects that mar the action of prudence, we should not expect that bishops should be immune from the pitfalls of prudent action in a politically-charged environment. The next section reviews the particulars of U.S. immigration policy, identifying the technical and prudential judgments that must be made to turn principle into policy.

IV. TURNING TEACHING INTO IMMIGRATION POLICY: FACTS AND JUDGMENTS

CST insists on the right to migrate, but recognizes that the common good of the host country may require restrictions on that right. If our obligations to provide justice to migrants put the common goods of our society at risk—our economic order, our culture, and our security—then our just obligations to our own citizens may force us to curtail the right to migrate. Restrictions on migration need not imply denigration of the migrants or of the value of migration to them. The benefits of immigration to immigrants—the economic benefits of higher pay, remittances, and the potential benefits to dysfunctional nations of having an overseas community experienced in the benefits of a free society—should figure into our policy deliberations. If we self-protectively curtail immigration, it is fitting that we do so with a sense of regret and reluctance. And, we should not do so lightly, without consideration for those who stand to benefit from our generosity. A rights perspective allows us to properly balance our generous welcome to immigrants against the burdens of immigration.

The content of immigration policy turns on three judgments. First, what are the economic, cultural, and security effects of immigration? Second, how should the tradeoffs between the good of immigrants and the good of U.S. citizens be weighed? And third, how effective, or ineffective, will

37. *Id.* at 17.

the various proposals be at regulating the flow of immigration, or in mitigating its effects?

People can and do disagree about each of these judgments. The central point of this paper is that bishops should not seek to privilege any particular judgment on any of these three points, beyond insisting that the interests of immigrants and the poor must be considered, and given appropriate (in my view, heavy) weight.

It is to the "facts" of U.S. immigration that we now turn. After a review of the effects of U.S. immigration, we shall turn our attention to the recent document of the U.S. and Mexican bishops, *Strangers No Longer*,³⁸ which outlines a plan for immigration reform. The bishops' statement, because it promotes a political agenda, must embody judgments about the particular facts of U.S. immigration, and argue for a specific balance between immigrant rights and the U.S. common good. Men and women may disagree about these judgments; the bishops should be clear that such disagreement is not itself a rejection of CST, or evidence of a bias against immigrants.

A. *Economic Effects*

Current immigration rates are historically high, even compared to the last great wave of immigration at the turn of the last century.³⁹ In 2004 there were an estimated thirty-six million foreign-born residents in the United States (12.3% of the U.S. population).⁴⁰ Of these, eleven million were naturalized citizens, ten million were legal permanent residents, and ten million were illegal immigrants.⁴¹ The flow of new immigrants into the United States peaked in 2001 at 1.5 million per year, and has fallen to just above one million per year more recently.⁴²

For the last ten years, immigration to the United States has become increasingly dominated by illegal immigrants—today more immigrants enter the country illegally than legally. At least 80% of immigrants from Mexico in the last ten years have been illegal.⁴³ Ten years ago there were an estimated five million illegal immigrants in the country; that number has doubled, to between eleven and twelve million today.⁴⁴ Immigrants were

38. U.S. Conference of Catholic Bishops, Migration & Refugee Services, *Strangers No Longer: Together on the Journey of Hope*, Jan. 22, 2003, <http://www.usccb.org/mrs/stranger.shtml>.

39. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES tbl.5 (2006), available at <http://www.census.gov/prod/2006pubs/07statab/pop.pdf>.

40. JEFFREY S. PASSEL, PEW HISPANIC CENTER, UNAUTHORIZED MIGRANTS: NUMBERS AND CHARACTERISTICS 3 (2005), available at <http://pewhispanic.org/reports/report.php?ReportID=46>.

41. *Id.* The rest were refugees, asylees, and other temporary immigrants.

42. *Id.*

43. *Id.* at 16.

44. PANEL ON THE DEMOGRAPHIC & ECON. IMPACTS OF IMMIGRATION, NAT'L RESEARCH COUNCIL, *Background to Contemporary U.S. Immigration*, in THE NEW AMERICANS: ECONOMIC,

concentrated in a handful of states in the past, but are becoming more dispersed throughout the country.⁴⁵

In line with CST's solicitude for the poor migrant, all discussion of the effects of immigration should begin with the effect on immigrants. There is little doubt that the income benefits to immigrants are substantial, relative to their home country income. For example, a Mexican immigrant, working full-time at California's minimum wage (\$6.75 an hour) earns more than twice Mexico's per capita income, and an even larger multiple of Mexico's median income.⁴⁶ Much of the monetary benefit of immigration is sent home as remittances.⁴⁷

The benefits and costs of immigration for natives fall under three headings: economic, cultural, and security. In the economic realm, both the estimated costs and benefits of immigration to natives are small. The National Academy of Sciences estimates that immigration increases the incomes of natives by ten billion dollars per year, most of which goes to employers of immigrants and to those who buy the goods and services they produce.⁴⁸ This seems like a significant monetary benefit until you compare it to an eleven trillion dollar economy. Immigration is neither destroying nor enriching our economy. Its continuation does not make us particularly rich, and its curtailment will not ruin our economy, no matter what it does to farming in California, to chicken processing in Arkansas, or to the nanny market in New York. The numbers are simply too small to matter much.

The supposedly alarming estimates of the net cost of immigration to government at all levels are similarly small, although they are trumpeted as if they are outrageously high. Careful estimates of the net fiscal cost of illegal immigration to the federal budget (not counting the modest benefits of immigration to social security) suggest that illegal immigrants impose five billion dollars more in costs than they pay in federal taxes.⁴⁹ Again, this seems like a large number, but it must be put in perspective. Five billion is .2% of the 2.1 trillion dollar federal budget; it is 1% of the federal deficit. The federal government *loses* five times that amount annually—the item in the federal budget for unreconciled transactions was \$24.5 billion in 2003.⁵⁰ Five billion dollars is not too large a cost to bear; there are other,

DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION 20, 51 (James P. Smith & Barry Edmonston eds., 1997) (estimating illegal immigration in the mid-1990s)[hereinafter *THE NEW AMERICANS*]; PASSEL, *supra* note 40, at 3 (recent estimates of illegal immigration).

45. PASSEL, *supra* note 40, at 11.

46. ANDREW YUENGERT, *INHABITING THE LAND* 28 n. 37 (Gloria L. Zuniga ed., 2003).

47. INTERNATIONAL MONETARY FUND, *BALANCE OF PAYMENTS STATISTICS YEARBOOK* 613 (2004).

48. *Immigration's Effects on Jobs and Wages: Empirical Evidence*, in *THE NEW AMERICANS*, *supra* note 44, at 220.

49. *Do Immigrants Impose a Net Fiscal Burden? Annual Estimates*, in *THE NEW AMERICANS*, *supra* note 44, at 283.

50. EXEC. OFF. OF THE PRESIDENT, *ECONOMIC REPORT OF THE PRESIDENT* 375, tbl.B-78 (2006), available at <http://www.whitehouse.gov/cea/erp06.pdf> [hereinafter *ECONOMIC REPORT*].

more alarming costs from illegal immigration than its effect on the federal budget.

The only economic burden from immigration that comes close to being significant is borne in California, on the wages of uneducated native workers. The five billion dollar fiscal burden on state and local government in California—Medicaid and education costs—is large when compared to the state's structural deficit of five billion dollars.⁵¹ But even this can be put in perspective when compared to total state and local spending in the United States, which equal one and a half trillion dollars per year.⁵² Because the fiscal burden of illegal immigrants is concentrated in a handful of states, those states have a strong case for federal help.

Perhaps the most troubling economic effect of immigration is its modest effect on the wages of unskilled workers. Immigration has decreased unskilled wages by at most 3–4% over the last 30 years.⁵³ Although this is a small decrease over three decades, it falls on the most vulnerable workers—those already adversely affected by trade and information technology. Thus, it should be troubling to those who care about the native poor, or who place native interests above immigrant interests. However, compared to the gains to immigrants from immigration—a quintupling of wages for unskilled workers from Mexico and tens of billions of dollars sent back to poor Latin Americans each year—the losses to unskilled natives are small. Moreover, a reduction in immigration will not protect native unskilled workers from the effects of free trade and information technology, which have combined to account for much of the stagnation in the wages of the unskilled.

The economics of immigration point to significant benefits to immigrants, and insignificant effects on natives. This rules out two arguments: that immigrants are necessary to the proper functioning of the U.S. economy, and that immigrants are taking jobs away from U.S. natives. The economic stakes are simply too small to support either of these arguments.

B. Culture

Arguments that immigration threatens the common good of the United States cannot be based on economic costs and benefits; therefore they must appear to threaten culture or security. The cultural stakes, whether they are large or small, generate strong emotions that overshadow immigration debates. There seem to be two major cultural concerns. First, are immigrants from non-European cultures in some way less suited for healthy democracy? Do they lack the habits—habits of compromise, self-reliance, and as-

51. Kate Folmar, *California Faces a \$5.5 Billion Budget Deficit Next Year*, SAN JOSE MERCURY NEWS, Nov. 15, 2006, available at http://www.mercurynews.com/mlld/mercurynews/news/local/states/California/northern_california/16020208.htm.

52. ECONOMIC REPORT, *supra* note 50, at 382, tbl.B-85.

53. GEORGE J. BORJAS, HEAVEN'S DOOR: IMMIGRATION POLICY AND THE AMERICAN ECONOMY 36 (1999).

sociation—that support U.S. institutions? And second, is a multiethnic society necessarily prone to division? Is immigration a threat to national unity?⁵⁴

My expertise is in the economic aspect of immigration, and I do not have as much confidence addressing the cultural aspects. Nevertheless, the questions that must be answered in order to gauge the effects of immigration on culture seem clear.

First, which cultural traits are desirable in immigrants? There has not been as much discussion of this question as I would like. Some might argue that it does not matter what immigrants are like—that America has successfully assimilated immigrants from very different cultures in the past. Nevertheless, if we care about the cultural composition of the immigrant flow, it seems strange that we should favor immigrants from white Europe on cultural grounds. Should we really prefer, for example, 100,000 devoutly-secular, globalistic French over 100,000 religiously-devout Mexicans? Perhaps, but there needs to be more discussion about the habits Europeans can bring to our democracy. Perhaps devout Mexicans carry more healthy western traditions into the United States than do Germans, Brits, and Italians.

Second, how are recent immigrants assimilating? How should we measure assimilation? Intermarriage rates and English language adoption have in the past been important indicators of assimilation.⁵⁵ High rates of intermarriage played an important role in assimilating the inassimilable Irish, for example.⁵⁶ These rates are generally high for Hispanics (45%), which bodes well for their assimilation.⁵⁷ Furthermore, how crucial is the English language to assimilation? Immigrants who speak or learn English assimilate faster economically and culturally.⁵⁸ New immigrants still adopt the English language over time, although illegal immigrants are slower.⁵⁹

C. *Security and the Rule of Law*

The combination of a surge in illegal immigration and the war on terror links immigration and national security in many minds. There is a lot of confusion about the security stakes in immigration policy. Namely, this confusion concerns the ways terrorists enter the country and function within it. Although immigration policy debates focus on permanent immigration, this kind of immigration is not a threat to national security. Terrorists can

54. See PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER* (1995); PATRICK J. BUCHANAN, *THE DEATH OF THE WEST: HOW DYING POPULATIONS AND IMMIGRANT INVASIONS IMPERIL OUR COUNTRY AND CIVILIZATION* (2002).

55. *Social Dimensions of Immigration*, in *The New Americans*, *supra* note 44, at 369, 376.

56. *Id.* at 369.

57. *Id.* at 370.

58. See ROBERT F. SCHOENI, KEVIN F. MCCARTHY & GEORGES VERNEZ, CTR. FOR RESEARCH ON IMMIGRATION POLICY, *THE MIXED ECONOMIC PROGRESS OF IMMIGRANTS* (1996).

59. See Geoffrey Carliner, *The Wages and Language Skills of U.S. Immigrants* (Nat'l Bureau of Econ. Research, Working Paper No. 5763, 1996).

enter the United States in many ways—as permanent residents, on schooling visas, or as temporary visitors who overstay their visas.⁶⁰ The crucial concern for national security in immigration matters is, then, the scrutiny of temporary visitors and their timely exit when their temporary visiting permits expire. Each year, thirty-four million tourists, businessmen, and relatives of U.S. citizens or permanent residents enter the United States from many parts of the world.⁶¹ Since the United States will not reduce the number of temporary entry permits, it is likely that terrorists will attempt to enter as temporary visitors so long as the federal enforcement mechanisms (for screening entrants prior to the approval of their temporary visas and for tracking their whereabouts until their visa expires) remain ineffective.

A discussion of the security stakes in immigration brings to the fore the most troubling aspect of our immigration problems—the large numbers of illegal immigrants who live among us. The number of illegal immigrants has more than doubled in ten years, from five to eleven million.⁶² Currently, more immigrants enter the country illegally than legally.⁶³

There is a long tradition in western political thought that laws be enforced, even to the point of recommending that unenforceable laws not be passed and unenforced laws be repealed.⁶⁴ Laws that are universally ignored tend to undermine respect for the law and corrupt the culture. The presence of twelve million or so illegal immigrants in the United States corrupts our law enforcement, our politics, and our economy, and undermines our ability to protect ourselves from terrorists. This corruption is the biggest threat from illegal immigration.

The corruption begins within the consciences of the illegal immigrants themselves. Millions of people are living a lie, pretending that they belong here in the United States and have rights here. Their illegal status undermines their ability to bargain for better wages, to resist abuses by employers, and their incentive to learn English and assimilate into U.S. culture. Illegal immigrants are more likely to remain in immigrant enclaves, seeking safety in numbers.⁶⁵

Illegal immigration corrupts our politics, because it forces us to pretend that laws we have passed democratically are not worth enforcing. Illegal immigrants even have their own lobbying groups; some illegal immigrants vote, no doubt. Advocates for illegal immigration insist not

60. STEVEN A. CAMAROTA, CTR. FOR IMMIGRATION STUDIES, *THE OPEN DOOR: HOW MILITANT ISLAMIC TERRORISTS ENTERED AND REMAINED IN THE UNITED STATES, 1993–2001* (2002), available at <http://www.cis.org/articles/2002/Paper21/terrorism.html>.

61. U.S. DEP'T OF JUSTICE, IMMIGRATION, AND NATURALIZATION SERV., *STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE*, tbl.37 (2000).

62. PASSEL, *supra* note 40, at 10.

63. *Id.* at 6.

64. THOMAS AQUINAS, *SUMMA THEOLOGICA, Part I of the Second Part*, q. 96, a. 2 (Mortimer Adler ed., William Benton 1952).

65. See BORJAS, *supra* note 53.

only that we tolerate their illegal presence, but that we pretend that the breaking of our laws is a trivial matter, not to be brought up in polite company. We must pretend that the biggest problem caused by illegal immigration is the lack of documentation, not illegal status—it is not politically correct to call illegal immigrants “illegal immigrants”; we must instead call them “undocumented workers.” Instead of deporting illegal immigrants, we must develop new forms of identification for them—matricular consular identification cards instead of passports and special driver’s licenses. We must treat them like they are legal immigrants and grant them in-state tuition to our public schools.

Our lack of desire to enforce immigration laws corrupts the immigration service. Complaints about how awful the old Immigration and Naturalization Services (INS) department used to be, and how it would be impossible to enforce immigration laws without a complete overhaul of the immigration service are common. Much of the dysfunction at the current Immigration and Customs Enforcement (ICE, which replaced the INS) is due to the impossible task the department was given: to pretend to enforce immigration laws while not really enforcing them, and to catch and release illegal immigrants.⁶⁶ Although it is certainly possible to track immigrants in the United States better than we do now, the immigration services must overcome a legacy of disorganization that stems in part from the contradictory job it was asked to perform.

The desire to appear to enforce immigration laws while not really enforcing them has led to building fences at the border, but not looking for illegal immigrants internally within the United States. This lopsided enforcement has been counterproductive. Before the era of vigorous border enforcement the typical illegal immigrant stayed in the United States for about a year, and did not bring his family.⁶⁷ Migrants cycled into and out of the United States. After the border became more difficult to cross, the average stay in the U.S. lengthened considerably.⁶⁸ Immigrants who crossed the border were less likely to go home, and were more likely to bring their families, to settle down, demand driver’s licenses and education for their children.

Most importantly, the presence of an underground market for smuggling and fake identification cards undermines our security. Drug smuggling and human smuggling go hand-in-hand. Terrorists may use the well-worn illegal entryways, and take advantage of the false identification infrastructure already in place.

66. DEPT. OF HOMELAND SECURITY, FACT SHEET: ICE ACCOMPLISHMENTS IN FISCAL YEAR 2006, Oct. 30, 2006, available at http://www.dhs.gov/xnews/releases/pr_1162228690102.shtm.

67. Sherrie Kossoudji, *Playing Cat and Mouse at the U.S.-Mexican Border*, 29 DEMOGRAPHY 159, 162 n.2 (1992).

68. *Id.* at 161.

It may be that addressing the problem of illegal immigration will solve most U.S. immigration problems. To the extent that immigration depresses wages, it is most often the wages of legal immigrants.⁶⁹ The ability to enforce immigration laws may reinvigorate the immigration service. Legal immigrants are more likely to assimilate than illegal immigrants. If there are fewer illegal immigrants, and we are not bashful about searching for them, there will be fewer ways for terrorists to hide in plain sight.

Of course, one can accept that illegal immigration is a big problem, and suggest different ways of dealing with it. One might eliminate all illegal immigration by opening the borders and giving out free green cards, or one might actually enforce the laws on the books. Prudent citizens must weigh the goods at stake in legalization and enforcement.

V. THE BISHOPS' REFORM AGENDA

It is entirely possible for people to disagree with the above analysis of the costs and benefits of immigration. Some argue that the costs of immigration to local communities, or to native unskilled workers, are larger than I have suggested, or too great to bear. Others may reject my claims that illegal immigration undermines respect for the law significantly.

Those who accept my analysis of the facts may use it to argue for very different policies, by weighing the goods of immigrants against the common good of the United States differently. Some may argue that current policies reflect too great a willingness to trade lower, unskilled, native wages for greater corporate profits and higher earnings for immigrants. Others may argue that the goods of U.S. culture deserve no consideration, asserting that they are based on patriarchy and market imperialism. To these, the legal chaos caused by illegal immigration may be a positive good, a sort of protest which gives impetus to much-needed change in the legal system.

Any disagreement this article generates about immigration reform reflects the point of the article: people can disagree about immigration reform, even if they share the evaluative framework of CST. When bishops clearly teach the evaluative framework, they help us to think carefully about the stakes in reform. When they push a concrete program of reform, they encroach on our freedom and responsibility to make difficult judgments about what should be done.

Recent teaching documents on immigration highlight the judgments necessary to advocate for policy—the sorts of judgments the bishops appear to take for granted. In January 2003 the Mexican and U.S. bishops issued a joint pastoral on migration between the two countries, “Strangers No

69. *Immigration's Effects on Jobs and Wages: Empirical Evidence*, in *THE NEW AMERICANS*, *supra* note 44, at 223.

Longer: Together on the Journey of Hope.”⁷⁰ In this document, the bishops advocate for a reform of the U.S. immigration system, consisting of widespread legalization of current illegal immigrants, the institution of an equally large guest worker program, and for lighter enforcement at the border.⁷¹

The assumption throughout the document is that current levels of immigration to the United States from Mexico and elsewhere are not a burden, and that those who suggest otherwise are xenophobes and racists in need of a “conversion of minds and hearts,” and “[p]art of the process of conversion of minds and hearts deals with confronting attitudes of cultural superiority, indifference, and racism; accepting migrants not as foreboding aliens, terrorists, or economic threats, but rather as persons with dignity and rights.”⁷²

In section two of the document (a review of CST on migration) the bishops introduce a “presumption” about the motives of the 10.5 million Mexican immigrants in the U.S.:

In the current conditions of the world, in which global poverty and persecution are rampant, the presumption is that persons must migrate in order to support and protect themselves and that nations who are able to receive them should do so whenever possible. It is through this lens that we assess the current migration reality between the United States and Mexico.⁷³

In this passage the bishops assert that Mexican migrants are all refugees, who are fleeing conditions of desperate, life-threatening poverty or persecution. This blanket assertion is certainly debatable: Mexico’s standard of living is certainly well below that of the United States, but is comfortably above that of desperately poor nations.⁷⁴ Many Mexicans are very poor, but they are not refugees; consequently, their right to migrate is not absolute.

The bishops begin their policy analysis with a discussion of the root causes of migration.⁷⁵ Migration from Mexico to the United States is rooted in the large differences in income between the two countries.⁷⁶ However, the bishops fail to mention the widespread corruption and crime in Mexico, choosing instead to focus on public programs to create jobs in rural communities, and joint programs between the United States and Mexican governments along the border.⁷⁷ By ignoring the role of corruption in the restriction of economic initiative in Mexico, the bishops ignore an impor-

70. U.S. Conf. of Catholic Bishops, *supra* note 38.

71. *Id.* ¶ 58.

72. *Id.* ¶ 40.

73. *Id.* ¶ 39.

74. United Nations Dev. Programme, *Human Dev. Report 2006, Beyond Scarcity: Power, Poverty, and the Global Water Crisis* (2006), <http://hdr.undp.org/hdr2006/pdfs/report/HDR06-complete.pdf>.

75. U.S. Conf. of Catholic Bishops, *supra* note 38, ¶¶ 59–62.

76. *Id.* ¶ 60.

77. *Id.* ¶ 62.

tant barrier to reform of the Mexican economy and the U.S. immigration system.

The bishops' advocacy for legalization and guest worker programs rests on several judgments about immigration policy. First, they assume that illegal immigration cannot be controlled;⁷⁸ this judgment must in turn rest upon two controverted propositions: that illegal immigrants are not deterred by enforcement, and that enforcement is too complicated to be carried out successfully. They may be correct about this, but certainly people might disagree with them, which suggests that the bishops have foreclosed policy options.

Second, the bishops assume that the combination of legalization and guest worker programs will reduce illegal immigration substantially.⁷⁹ This is at least debatable: guest workers are rarely temporary workers, and legalization in the past did not decrease illegal immigration in the United States.⁸⁰ In fact, some argue this combination has increased illegal immigration, by improving the immigrant support network in the United States, and by holding out the promise of future legalization for illegal immigrants.⁸¹

Finally, by raising concerns about recent steps that make asylum claims more difficult in the United States, the bishops ignore the widespread abuse of the asylum system. Every immigrant is assumed to be an asylee-in-waiting.⁸² But, the bishops give no consideration to the high rates at which asylee claimants fail to show up for their hearings.⁸³

These are just a few of the judgments that are implicit in the bishops' advocacy for immigration reform. People may disagree with the bishops' conclusions about the causes of immigration, the effects of legalization, the prospects for enforcement, and the problems of asylum abuse. Disagreements about appropriate policy may easily turn on these issues. By using their teaching authority to promote concrete reforms, the bishops take for granted the prudential judgments necessary to evaluate policy. By framing the issues in terms of conversion and xenophobia, the bishops cast aspersions on the faithful who disagree with their policy analysis.

78. *Id.* ¶ 79.

79. *Id.* ¶ 76.

80. See CHRISTIAN JOPPKE, *IMMIGRATION AND THE NATION-STATE: THE UNITED STATES, GERMANY, AND GREAT BRITAIN* (1999).

81. See BRIMELOW, *supra* note 54.

82. U.S. Conf. of Catholic Bishops, *supra* note 38, ¶¶ 92–99.

83. For a summary of statistics on no-show rates, see Bill Frelick, *U.S. Detention of Asylum Seekers and Human Rights*, MIGRATION POLICY INSTITUTE, March 1, 2005, <http://www.migrationinformation.org/Feature/display.cfm?id=296>. Roughly thirty percent of asylum claimants fail to show for their first hearing; the no-show rate is much higher (85%) for claimants who are denied asylum.

VI. CONCLUSIONS

I have made the argument that Catholic bishops and those who work in their name should be reluctant to give specific advice about turning CST into policy. The principles of CST, which bishops teach with authority, simply do not alone determine which policies should be enacted to address the current challenges of immigration. By telling Catholics that the Gospel demands support for the McCain-Kennedy reforms and opposition to the Sensenbrenner-King bill, the bishops are usurping the place of the laity, who are called to exercise prudence in applying clearly understood first principles to messy, chaotic, uncertain environments.

If bishops took prudence more seriously, they would be more guarded in their support for specific legislative action. Their lobbying campaign is a violation of the principle of subsidiarity—the principle by which responsibility devolves from higher to lower groups in society. Individual Catholics are moral agents, and should be allowed to exercise and develop that agency whenever possible. By allowing individual Catholics the freedom to make the judgments necessary to apply CST to their local circumstances, and in the context of their lives as citizens in a democracy, the Catholic Church will more effectively establish justice.

I argue in this article that the bishops would be prudent to be more guarded in their promotion of a political agenda. I do not mean to argue that bishops should never make suggestions, or evaluate concrete realities in light of CST. It would be impossible for them to speak in purely abstract terms about society, and irresponsible for them to be silent in the face of laws and social conditions that directly threaten human dignity. First principles have no real existence apart from concrete circumstance; bishops cannot avoid reference to concrete circumstance when teaching about principles.

When the bishops suggest policies, however, they ought to include a prudent disclaimer that their authority in prudential matters is not equivalent to their authority in matters of CST. An excellent example of this discretion is “Economic Justice for All,” the 1986 Pastoral Letter on the U.S. economy.⁸⁴ In a transition section from a treatment of general principle to the analysis of particular economic problems, the bishops claim an obligation to speak about particulars, but assert no claim to a special authority in teaching about policy:

This document is not a technical blueprint for economic reform. Rather, it is an attempt to foster a serious moral analysis leading to a more just economy.

84. NAT'L CONF. OF CATHOLIC BISHOPS, *ECONOMIC JUSTICE FOR ALL: CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY*, THIRD DRAFT 37 (U.S. Catholic Conf. Off. of Publ'g and Promotion Services 1986).

In focusing on some of the central economic issues and choices in American life in the light of moral principles, we are aware that the movement from principle to policy is complex and difficult and that although moral values are essential in determining public policies, they do not dictate specific solutions. They must interact with empirical data, with historical, social, and political realities, and with competing demands on limited resources. The soundness of our prudential judgments depends not only on the moral force of our principles, but also on the accuracy of our information and the validity of our assumptions.

Our judgments and recommendations on specific economic issues, therefore, do not carry the same moral authority as our statements of universal moral principles and formal church teaching; the former are related to circumstances which can change or which can be interpreted differently by people of good will. We expect and welcome debate on our specific policy recommendations. Nevertheless, we want our statements on these matters to be given serious consideration by Catholics as they determine whether their own moral judgments are consistent with the Gospel and with CST.⁸⁵

This statement could not be clearer. The bishops must teach the faith, and the principles of a just economy, and to do that they often must get specific, even to the point of suggesting specific actions. Nevertheless, their practical agenda does not carry the same weight as their teaching on principle. The bishops were clear about this in 1986. I see no such discretion in the bishops' blueprint for immigration reform.

85. *Id.*